**THE HONOURABLE SRI JUSTICE**

**B.SESHASAYANA REDDY**

**W.P.No.26390 of 2001**

**Disposed of on 27-7-2005**

**Between:**

**R.Devi Singh and others .. petitioners**

**And**

**Commissioner for Appeals under ULC**

**And others. ..respondents**

**THE HONOURABLE SRI JUSTICE**

**B.SESHASAYANA REDDY**

**W.P.No.26390 of 2001**

O R D E R:

1. The petitioners who are 11 (eleven) in number assail the order passed by the Commissioner for Appeals under the Urban Land (Ceiling and Regulation) Act, 1976-1st respondent in ULC Appeal No.HYD.17/1999 dated 3.10.2001 whereby and where under the order dated 18.2.1999 passed by the Special officer and Competent Authority, ULC, A.P. Hyderabad-2nd respondent came to be confirmed.

2. Satwaji and three others who are holding considerable extent of lands filed statements under section 6(1) of Urban Land (Ceiling and Regulation) Act, 1976 (Act.33 of 1976) (for short Act) before the competent authority. Their declarations were numbered as C.Cs.9033/76, 9035/76, 10549/76 and 12091/76. A draft statement under section 8(1) and notice under section 8(3) of the Act came to be issued on 30-9-1988 determining the surplus area as 2,10,245.88 square meters provisionally. The declarants filed objections on 21.7.1989. An enquiry was conducted under section 8(4) of the Act by giving opportunity of personal hearing to the declarants. The competent authority examined the objections raised by the declarants and final statement under section 9 of the Act came to be issued on 28.10.1989 determining that the declarants hold an extent of 1,90,011.56 square meters in excess of the ceiling limit in S.Nos.91/1, 92, 93, 94, 95/A, 102E, 103 to 105 and 107 of Nanakramguda village. A notification under section 10(1) of the Act was issued on 24.3.90 and got published in A.P.Gazettee No.92, dated 18.4.90 and the declaration under section 10(3) of the Act came to be issued on 8.12.1993 vesting the land with the Government free from all encumbrances w.e.f. 10.1.1994. Notice under section 10(5) of the Act was issued on 17.5.1994. During the spot inspection by the Enquiry officer it was revealed that surplus land was in possession of persons other than the declarants. Therefore, notice under section 10(5) of the Act was issued to the occupants on 18.7.1994. The occupants have filed an appeal before the appellate authority i.e. CLR & ULC., A.P., Hyderabad assailing the notice issued under section 10(5) of the Act. The appellate authority allowed the appeals and remanded the case for fresh determination in accordance with law, by judgment dated 1.8.1996. On remand the competent authority heard the occupants as well as the declarants and re-determined the excess holdings of the declarants after extending the benefit under section 4(1)(b) of the Act and G.O.Ms.No.733. Each declarant land holder was found to be holding an extent of 23,908.42 square meters in excess of the ceiling limit. Assailing the order passed by the competent authority, two sets of parties have filed appeals before the 1st respondent. The first appeal being 16/99 is filed by Shaik Ameer, Shaik Ahmed and Shaik Samad and the second appeal being 17/99 is filed by R.Devi Singh, Sadabi Raj, R.Suresh Singh, Ranjit Singh, Manju bai, R.Santosh Singh, E.Sanjeeva Reddy, E.Malla Reddy, E.Narasimha Reddy and R.Mohan lal. The appellate authority on considering the

material on record and on hearing counsel for parties dismissed the appeals by order dated 3.10./2001. Hence, this writ petition by the appellants in Appeal No.17/99.

3. To complete the narration of facts I deem it appropriate to refer para 3 of the affidavit filed in support of the writ petition and it is thus:

" We are the purchasers of agricultural land situated in Survey Nos.91, 102, 103, 104, 105 and 107 of Nanakramguda village, Serlingampally Mandal, R.R.District under unregistered sale deeds from respondents 3 to 14 who are members of an undivided Hindu family. Subsequent to the purchase of the said lands, we have applied for regularization of the unregistered sale transactions under Section 5-A of the A.P.Record of right in land and Pattedar Passbook Act, 1971 and consequent on the regularization orders passed by the Mandal Revenue Officer, we were issued pattedar passbooks and title deeds in respect of the lands purchased by us. All the entries in the revenue records in respect of the said lands clearly disclose that the lands are agricultural lands all the time. Some of us have obtained regular registered sale deeds from our vendors to avoid future complications. Thus, all of us are absolute owners and possessors of the said lands and we have been carrying on agricultural operations over the said land for the last several decades. For all practical purposes, the said lands should be treated as agricultural lands since it is recorded as such in the revenue records for the relevant period."

4. The petitioners challenged the order of the appellate authority on the following grounds:

1. The lands in possession of the petitioners/appellants are agricultural lands and therefore provisions of the Act are not applicable;

2. As on the date of the commencement of the Act there was no master plan covering the lands in question and therefore the lands in question cannot be treated as vacant land as defined in Sec.2(q) of the Act.

3. One of the purchasers namely K.Srinivas Rao was given the benefit of G.O.No.733 and therefore the same benefit ought to have been extended to the petitioners also.

4. The respondents filed counter affidavit. It is stated in the counter affidavit that all the sales have taken place after the commencement of the Urban Land (Ceiling and Regulation) Act, 1976 and as such they are contrary to Sections 5(3) and 10(1) of the Act and they shall be treated as null and void. The competent authority has extended the benefit to one of the appellants i.e. K.Srinivasa Rao on the ground that the land in possession falls within the purview of G.O.Ms.No.733, dated 31.10.1998. Kasiram and Ambabai w/o Late Tukaram, holders of the land admeasuring 45,142.72 square meters were given benefit under G.O.Ms.No.733 as the lands fall in peripheral area besides 1000 square meters as retainable area under section 4(i)(b) of the Act and they were declared as surplus land holders to an extent of 23,902.42 square meters each. It is further stated in the counter affidavit that the original declarants have not challenged the orders passed by the Special Officer and Competent Authority under section 8(4) of the Act and the same has become final. The alleged purchases made the petitioners are contrary to Sec.5(3) and 10(4) of the Act and therefore, they have no locus standi to file the writ petition. The lands in question are classified as conservation zone in the master plan. But the classification as such does not prohibit construction of building thereon. It is specifically stated in the counter affidavit that the Special Officer and Competent Authority has granted benefit under G.O.Ms.No.733 to all the declarants. It is further stated in the counter affidavit that the declarants have not challenged the proceedings of the revised 8(4) orders of the competent authority. However, the purchasers R.Devi Singh and others who are the petitioners herein and one Shaik Amer and two others filed appeals before the Chief Commissioner of Land Administration and they were numbered as Appeal Nos.Hyd/16 and 17/99 and the Commissioner after considering all the material on record and on hearing the parties dismissed the appeals by an order dated 3.10.2004. Issuance of pattedar passbook and title deeds by the Mandal Revenue Officer does not create any legal right or title in favour of the petitioners.

5. Heard learned counsel appearing for the petitioners and the learned Government Pleader for Assignment appearing for the respondents.

6. Learned counsel appearing for the petitioners submits that the lands in possession of the petitioners are agricultural lands and therefore the provisions of the Act cannot be made applicable to them. In elaborating his arguments he submits that the master plan covering the lands in possession of the petitioners came into effect on 23.6.1980 and therefore the provisions of the Act could not be made applicable to the said lands. His further submission is that even in the master plan the lands in question have been shown as conservation zone and therefore they cannot be treated as 'vacant land' within the meaning of the Act. In support of his submissions reliance has been placed on the decisions of our High court in STATE OF A.P. AND ANOTHER V. S.B.KOMARAIAH, P.S.RAO v. SPL.OFFICER & COMPETENT AUTHORITY, URBAN LAND CEILING, HYD. and VENKATA REDDI V. COMMR.OF LAND REFORMS & URBAN LAND CEILINGS. In the first cited decision it has been held by a Division Bench of our High Court that as and when any land, which was not vacant at the time of commencement of the Act becomes vacant on a subsequent date, the holdings of the persons have to be decided with reference to the subsequent date on which the land becomes vacant. Any adjudication in respect of such lands with reference to the date of commencement of the Act cannot be sustained. In the second cited decision the issue fell for consideration was whether the Government Order G.O.Ms.No.733 is made applicable prospectively or forms part of the statute itself. It has been held as follows:

> " The Government, by virtue of the delegated power conferred upon it under Section 20(1)(a) of the Act, has issued the G.O. The G.O. makes it very clear that the land situated in the peripheral area as specified in Column 3 of Schedule I to the Act of the Hyderabad Urban Agglomeration, Visakhapatnam Urban Agglomeration, Guntur Urban Agglomeration, Warangal Urban Agglomeration in excess of the ceiling limit is exempted from the provisions of Chapter III of the Act. At the threshold, it can be noted that what is assailed before the Court in the present Writ Petition is the validity of the appellate order arising out of the notice of the first respondent under Section 10(5) of the Act. Section 10 falls within Chapter III of the Act. On that count itself, even accepting the argument of the learned Government Pleader for Revenue that the G.O. is applicable prospectively and not retrospectively, even then the petitioner is entitled to exemption inasmuch as he has assailed the validity of the action taken under Section 10(5) of the Act calling upon him to deliver the excess land determined by the second respondent. Added to this, it is well settled position in law that once

> a statutory authority by exercise of its delegated power frames rules or issues notifications exercising power of exemption, such exemption would form part of the statute itself and such exemption is required to be implemented and worked out with effect from the date of the statute itself. Therefore, the stand taken by the Government and reiterated by the learned government Pleader for Revenue is not well founded for the reasons stated supra."

In the third cited decision, it has been held that merely keeping the land fallow does not change the nature of land and does not amount to converting agricultural land as non-agricultural land. It has been further held that even if the land is kept fallow it cannot be treated as agricultural land unless contrary is proved.

7. Learned Government Pleader for Assignment appearing for the respondents 1 and 2submits that the benefit of G.O.Ms.No.733 has been given to the declarants and therefore granting further benefits to the petitioners who are purchasers does not arise. It is also submitted by him that the petitioners are subsequent purchasers and therefore, it is not open for them to question the said orders determining the excess holdings of the declarants. Reliance has been placed on the decisions of Supreme Court in STATE OF A.P. v. N.AUDIKESAVA REDDY, and our High Court in P.GANESWARA RAO v. SECRETARY TO GOVT., REV. DEPT., HYD., ZARINA AND OTHERS V. SPECIAL OFFICER AND COMPETENT AUTHORITY, ULC and ANNE RAMACHANDRA RAO v. GOVERNMENT OF A.P.

8. The primary object of the Act was to prevent the concentration of Urban land in the hands of a few persons and speculation and profiteering therein and to bring about an equitable distribution of land in urban agglomeration to subserve the common good. In STATE OF A.P. v. N.AUDIKESAVA REDDY it was held as under:

> " 12. THE observations that the authorities by their subsequent action after 17/02/1976 cannot alter or introduce the master plan which has the effect of increasing the area of excess vacant land do not represent the correct view of law. The aforesaid explanation to Section 6 (1), inter alia, provides that where any land, not being vacant land, situated in a State in which this Act is in force has

become vacant land by any reason whatsoever, the date on which such land becomes vacant land would be the date of the commencement of the Act as regards such land.

13. DEVELOPMENT and town planning are ongoing processes and they go on changing from time to time depending upon the local needs. That apart, the definition of the "master plan" in Section 2 (h) is very significant. It reads as under :

"2(H) 'master plan', in relation to an area within an urban agglomeration or any part thereof, means the plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order made by the State Government for the development of such area or part thereof and providing for the stages by which such development shall be carried out."

THE above provision, inter alia, contem-plates the master plan prepared under any law for the time being in force for development of an area. The plan shall also provide for the stages by which such development shall be carried out. It is evident from the aforesaid definition of master plan that it takes in view any plan prepared even subsequent to the coming into force of the Act. Further, the explanation to Section 6 (1), as noticed above, very significantly provides that every person holding vacant land in excess of the ceiling limit at the commencement of the Act shall file a statement before the competent authority and "the commencement of the Act" under Clause (2) would be when the land becomes vacant for any reason whatsoever. Therefore, the date of commencement of the Act in a case where the land, which was not vacant earlier, would be the date on which such land becomes vacant land. It, thus, contemplates a situation of land, not being vacant, becoming vacant due to preparation of a master plan subsequent to 17/02/1976. Further, the provisions of the Act require filing of a statement under Sections 6, 7, 15 and 16 from time to time as and when land acquires the character of a vacant land. Obligation to file statement under the Act arises when a person comes to hold any vacant land in excess of the ceiling limit, which date necessarily may not be 17/02/1976. It would all depend on the facts and circumstances of each case.

14. ACCORDINGLY, we hold that the master plan prepared as per law in force even subsequent to enforcement of the Act is to be taken into consideration to determine whether a particular piece of land is vacant land or not and, to this extent, Atia Begum is not correctly decided."

9. Reverting to the facts of the present case it is to be noted that admittedly as on the relevant date the master plan of Hyderabad city did not include the land in question, it is only under the master plan issued under G.O.Ms.No.391, dated 23.6.1980, the lands in question came to be included in the master plan. In view of the judgment of

the Supreme court in STATE OF A.P. v. N.AUDIKESAVA REDDY's case it cannot be said that the lands of the petitioners cannot be treated as vacant land at all and that it was not covered by the provisions of the Act.

10. The principal contention of the petitioners is that they purchased the land in the year 1975 itself and therefore by the date of commencement of the Act the declarants were divested of title. The same contention was advanced before the competent authority. The competent authority recorded a finding that the petitioners failed to place on record any evidence to prove that they purchased the lands prior to the date of commencement of the Act. A categorical finding has been recorded by the competent authority that the sale transactions took place after the commencement of the Act and during the pendency of the proceedings.

11. It is apparent on the record that the petitioners did not adduce any evidence before the competent authority to show that they purchased the lands prior to the commencement of the Act. I do not see any valid reason to interfere with the findings recorded by the competent authority in that regard.

12. So far as the nature of land in the context of the Act is concerned, three definitions deserve to be noted, viz., (1) Urban Agglomeration; (2) Urban land; and 93) Vacant land.

13. Urban Agglomeration is defined under Section 2(n) of the Act to mean the area specified in the corresponding entry in column (2) thereof of Schedule I and also includes the peripheral area specified in the corresponding entry in column (3) thereof. The urban agglomeration includes not only the territorial limits of the concerned local authority, such as, Corporation, Municipality, etc., but also some peripheral areas.

Urban land is defiend under section 2(O) of the Act as under:

"2(O) "Urban land" means:

i. Any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

ii. In a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality (by whatever name called,) a notified area committee, a town area committee, a city and town committee, a small town committee, a Cantonment Board or a Panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

Explanation: For the purpose of this clause and clause (q), -

A. "agriculture" includes horticulture, but does not include-

i. raising of grass,

ii. dairy farming,

iii. poultry farming,

iv. breeding of live-stock, and

v. such cultivation, or the growing of such plant, as may be prescribed;

B. land shall not be deemed to be used mainly for the purpose of agriculture, if such land is not entered in the revenue or land records before the appointed day as for the purpose of agriculture:

Provided that where on any land which is entered in the revenue or land records before the appointed day as for the purpose of agriculture, there is a building which is not in the nature of a farm-house , then, so much of the extent of such land as is occupied by the building shall not be deemed to be used mainly for the purpose of agriculture:

Provided further that if any question arises whether any building is in the nature of a farm-house such question shall be referred to the State Government and the decision of the State Government thereon shall be final;

© notwithstanding anything contained in clause (B) of this Explanation, land shall not be deemed to be mainly used for the purpose of agriculture if the land has been specified in the master plan for a purpose other than agriculture;"

14. An argument has been advanced by the learned counsel appearing for the petitioners that in the master plan the lands in question have been shown as conservation zone and therefore it cannot be treated as vacant land. The expression vacant land is defined under section 2(q) of the Act which reads as under:

" 2(q) Vacant land means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

i. land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

ii. in an area where there are building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such

building;

iii. in an area where there are no building regulations, the land occupied by any building which has been constructed before, or is being constructed on, the appointed day and the land appurtenant to such building.

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records), then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause. ”

15. A question came up for consideration before the Supreme Court in STATE OF GUJARAT v. PURSHOTTAM RAMDAS PATEL as to whether a piece of land situated within an area included in the Town Planning Scheme to obtain the permission from the local authority under section 29(1)(a) of Bombay Town Planning Act, 1954, before erecting or constructing any building as provided therein stands outside the definition of vacant land as provided in Sec.2(q)(i) of Urban Land (Ceiling and Regulation) Act, it has been held as follows:

“ 7……Merely because S.29(1)(a), Bombay Town Planning Act, 1954 requires a person owning the land to which a scheme applied to obtain permission of the local authority to construct a building on it, it cannot be said that the land was one on which construction of building was not permissible. The embargo in question was not total. It was only where the ban was complete it could be said that no construction was permissible on the land. The High Court omitted to notice that the owners were entitled to construct buildings on the lands after the permission was accorded by the local authority. The finding of the High Court that by virtue of S.2991)(a), Bombay Town Planning Act, 1954 the lands fell outside the definition of ‘vacant land’ in the Act is, therefore, unsustainable.”

Reverting to the facts of the case on hand under G.O.Ms.No.289 M.A., dated 1.6.1989 the landowners can change use of land in the conservation zone on their application. Therefore, I find that the lands in question comes squarely within the meaning of vacant land.

16. The next contention of the learned counsel for the petitioners is that the petitioners are also entitled to claim benefit under G.O.Ms.No.733 and in which event the lands in possession of the petitioners come within the ceiling limit. The competent authority has granted benefit of the said Government Order to the declarants before deciding their excess holdings and therefore, giving the same benefit once again to the petitioners who are purchasers from the declarants does not arise.

17. In view of the above discussion, I find that this writ petition is devoid of merits and accordingly the same is hereby dismissed. No costs.

Dated: 27-07-2005. ( B.Seshasayana Reddy, J )

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